

1 Adam B. Nach – 013622
2 Joel F. Newell- 025296
2 **LANE & NACH, P.C.**
3 2001 E Campbell Avenue, Suite 103
4 Phoenix, AZ 85016
5 Telephone No.: (602) 258-6000
Facsimile No.: (602) 258-6003
Email: adam.nach@lane-nach.com
Email: joel.newell@lane-nach.com

6 Attorneys for Diane M. Mann, Trustee

7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 In re:

10 CHARLES MARTIN WESLEY,

11 Debtor.

(Chapter 7 Case)

Case No. 2:12-bk-24374-MCW

**STIPULATED APPLICATION TO
COMPROMISE CLAIMS [F.R.B.P. 9019]**

13 Diane M. Mann, Chapter 7 Trustee (“**Trustee**”), and Patricia A. Johnson fka Patricia A. Wesley
14 (“**Mrs. Johnson**”), by and through their attorneys undersigned (collectively “**Parties**”), herein apply to
15 this Court for an Order authorizing Trustee to compromise claims of the Estate of Charles Martin Wesley
16 (“**Debtor**”). In support of this Stipulated Application, the Parties present the following Memorandum of
17 Points and Authorities and the entire record of this Chapter 7 administrative case and related adversary
18 matter.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **A. FACTUAL BACKGROUND.**

21 1. On or about September 17, 1971, Debtor and Mrs. Johnson were married.

22 2. On or about January 24, 2008, Debtor and Mrs. Johnson used the proceeds from the sale of
23 a property in Texas to purchase real property in Arizona located at 39597 N. 106th Street, Scottsdale, AZ
24 85262 (“**Arizona Property**”).

25 3. On or about June 17, 2011, the Arizona Property was sold which resulted in net sale
26 proceeds in the amount of \$153,322.67 (“**Sale Proceeds**”) which were placed in a bank account held by
27 Shelby AZ, LLC (“**Shelby AZ**”).

28
Lane & Nach, P.C.
2001 E. Campbell Ave., #103
Phoenix, AZ 85016

1 4. Upon information and belief, Debtor and Mrs. Johnson were the sole owners of Shelby AZ
2 and Shelby AZ was a community property asset of Debtor and Mrs. Johnson.

3 5. On October 3, 2011, Debtor and Mrs. Johnson's marriage was dissolved pursuant to a
4 Consent Decree of Dissolution of Marriage (Divorce) ("Decree") entered in the Maricopa County
5 Superior Court.

6 6. The Decree did not reference or address either party's interest in Shelby AZ or the Sale
7 Proceeds.

8 7. On or around December 2, 2011, Mrs. Johnson formed Shelby House, LLC ("Shelby
9 House").

10 8. This case was commenced by voluntary petition filed by Debtor on November 8, 2012
11 ("Petition Date").

12 9. Trustee is the duly qualified and acting Trustee in this case.

13 10. Trustee alleges that Mrs. Johnson transferred the community property proceeds from the
14 sale of the Arizona Property into her personal bank account, and later into an account in the name of
15 Shelby House, for the benefit of her sole and separate property ("Transfer").

16 11. On or about November 6, 2014, Trustee commenced an adversary proceeding, case
17 number 2:14-ap-00917-BKM, wherein Trustee claims that the transfer of one-half of Debtor's share of the
18 Sale Proceeds is avoidable and recoverable from Mrs. Johnson pursuant to 11 U.S.C. §§ 547, 548, 550,
19 and 551 ("Claim").

20 12. Mrs. Johnson disputes Trustee's Claim, and asserts that the Transfer was a form of spousal
21 maintenance and contends Debtor received ample consideration in return. Mrs. Johnson further asserts,
22 among other defenses, that she was a good faith transferee pursuant to 11 U.S.C. §§ 550(b)(1) and that the
23 Sale Proceeds are protected under Arizona's homestead exemption pursuant to A.R.S. § 33-1101(A).

24 13. On or about January 19, 2016, the Court entered an Order granting Mrs. Johnson's Motion
25 for Summary Judgment regarding Count 1 of the Claim; however, denied Mrs. Johnson's Motion for
26 Summary Judgment regarding Count 2.¹

27
28

¹ Count 3 of the Trustee's Complaint was voluntarily dismissed at oral argument on October 6, 2015.
Lane & Nach, P.C.
2001 E. Campbell Ave., #103
Phoenix, AZ 85016

1 **B. AGREEMENT BETWEEN THE PARTIES.**

2 14. Trustee has received an offer from Mrs. Johnson to settle the Claims. Mrs. Johnson agrees
3 to pay to the Estate the sum of \$5,000.00 (“**Settlement Amount**”), as set forth below, in order to settle the
4 Estate’s interest in the Claims, subject to Court Approval.

5 15. Mrs. Johnson agrees to pay the Settlement Amount to the Trustee within ten (10) days
6 after entry of an Order approving this Stipulated Application.

7 16. Mrs. Johnson further agrees that if payment is received by the Trustee prior to the Court
8 entering an Order approving this Stipulated Application, the Trustee may deposit the payment into the
9 Trustee’s bank account established for this case.

10 17. Payment shall be in the form of a check naming as payee “**Diane M. Mann, Trustee**” and
11 mailed directly to “**Diane M. Mann, Trustee, P.O. Box 12970, Scottsdale, AZ 85267-2970**” with a
12 photocopy of the check emailed to adam.nach@lane-nach.com.

13 18. Upon entry of the Order approving the Stipulated Application and receipt of the
14 Settlement Amount in full by the Trustee, the Trustee shall file the documents necessary to dismiss the
15 Adversary Complaint with prejudice as to all named Defendants each party bearing their own attorneys’
16 fees and costs.

17 19. This Agreement is entered into between the Parties as a compromise of claims disputed
18 as to amount and is executed solely for the purpose of avoiding the cost and uncertainty of litigation.
19 None of the Parties, by entering into this Agreement, admits lack of merit to their respective positions
20 or merit of opposing positions.

21 20. If any term, covenant, condition or provision hereof is illegal or invalid or unenforceable
22 for any reason whatsoever, such illegality or invalidity or unenforceability shall not affect the legality,
23 validity or enforceability of the remaining parts hereof.

24 21. The signatories hereto represent and warrant that they have the authority to execute this
25 Agreement for and on behalf of the Parties, that they have not assigned, conveyed, or otherwise
26 transferred those claims or causes of action released herein, and that the Parties own all claims and
27 causes of action they purport to release herein.

1 22. Although Trustee believes she would be successful in litigation, based upon the time,
2 costs, and uncertainty associated with litigation, Trustee, in her best business judgment, believes that the
3 current settlement will maximize distribution to creditors of the Estate. Moreover, even if successful in
4 litigation, Trustee anticipates that litigation costs would be significant.

5 23. This Agreement is expressly contingent upon entry of a Court Order approving the terms
6 set forth herein.

7 **C. LEGAL AUTHORITY.**

8 This Court has jurisdiction over Debtor's Chapter 7 case under 28 U.S.C. § 1334. Proceedings
9 with respect to the Motion are core proceedings that the Court may hear and decide. *See* 28 U.S.C. §
10 157(b)(1) and (b)(2)(A), (E), (F), and (H). Moreover, venue is appropriate pursuant to 28 U.S.C. §
11 1408(1).

12 The requested relief is authorized by Rule 9019(a) of the Federal Rules of Bankruptcy Procedure
13 which provides as follows:

14 On motion by the trustee and after notice and a hearing, the court may approve a
15 compromise or settlement. Notice shall be given to creditors, the United States
16 Trustee, the debtor, the indenture trustee as provided in Rule 2002 and to any other
entity as the court may direct.

17 The Trustee, in the exercise of her best business judgment and in consideration of the requirements
18 of *A & C Properties*, 784 F.2d 1377 (9th Cir. 1986), *In re Woodson*, 839, F.2d 610 (9th Cir. 1988), and *In*
19 *re Schmitt*, 215 B.R. 417 (9th Cir. BAP 1997), believes that the proposed compromise and settlement is an
20 appropriate resolution of this matter.

21 Bankruptcy courts have broad discretion in approving compromise agreements. *In re Woodson*
22 839 F.2d at 620. The Court may approve a compromise if it is fair and equitable. *Id.* In determining the
23 fairness and adequacy of a proposed compromise agreement, the Court should consider the following four
24 factors: (1) the probability of success in litigation; (2) the difficulties, if any, to be encountered in
25 collection; (3) the complexity of the litigation involved as well as the expense, inconvenience and delay
26 necessarily attendant to the litigation; and (4) the paramount interest of creditors and a proper deference to
27 their reasonable views.

28 Consideration of these factors does not require the Court to decide questions of law or fact raised
Lane & Nach, P.C.
2001 E. Campbell Ave., #103
Phoenix, AZ 85016

1 in the controversies sought to be settled, or determine that the compromise presented is the best possible
2 outcome. Rather, the Court need only canvass the issues to determine whether the settlement fails “below
3 the lowest point in the zone of reasonableness”. *Newman v. Stein*, 464 F.2d 689, 698 (2nd Cir. 1972). cert.
4 denied. 409 U.S. 1039 (1972); see also *In re Pennsylvania Truck Lines, Inc.*, 150 B.R. 595, 598 (Bankr.
5 E.D. Pa. 1992) (holding that a bankruptcy court must consider these factors to see whether the settlement
6 falls below the lowest point in the range of reasonableness.) Accordingly, if the court finds the
7 compromise does not fall below the threshold of reasonableness, the compromise should be approved. *In*
8 *re Planned Protective Services, Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).

The Trustee believes the proposed settlement is in the best interest of the creditors and parties-in-interest of this Estate. The settlement provides funds for the benefit of creditors of the Estate while avoiding the cost and uncertainty associated with litigation of this matter.

WHEREFORE, the Parties pray for an Order of this Court as follows:

- A. Authorizing the Trustee accept the sum of \$5,000.00, pursuant to the terms set forth herein, in order to settle the Estate's interest in the Claims, and
- B. For such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of April, 2016.

LANE & NACH, P.C.

By /s/ JFN – 025296
Adam B. Nach
Joel F. Newell
Attorneys for Trustee

DECONCINI MCDONALD YETWIN & LACY, P.C.

By /s/ Jody A. Corrales
Jody A. Corrales
Attorney for Defendants Patricia Johnson and Thomas
Johnson

111
111

CERTIFICATE OF MAILING

COPY of the foregoing delivered via first class mail as follow:

Charles Martin Wesley
31972 N. 127th Lane
Peoria, AZ 85383
Debtor, Pro Se

COPY of the foregoing delivered via electronic mail as follows:

Office of U.S. Trustee
230 North First Avenue
Phoenix, AZ 85003
Email: Renee.S.Shamblin@usdoj.gov

Jody A. Corrales
Deconcini McDonald Yetwin & Lacy, P.C.
2525 East Broadway Blvd., Suite 200
Tucson, AZ 85716-5300
Email: jcorrales@dmyl.com
*Attorney for Defendants Patricia Johnson and
Thomas Johnson*

By /s/ Stephanie Anderson